

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2002-006665

12/20/2002

HONORABLE MICHAEL D. JONES

CLERK OF THE COURT
P. M. Espinoza
Deputy

FILED: _____

DAWN DASHEE

DANIEL M ROSENFELT

v.

STATE OF ARIZONA HEALTH CARE COST
CONTAI, et al.

LOGAN T JOHNSTON

THE OFFICE OF ADMINISTRATIVE
1400 W WASHINGTON
STE 101
PHOENIX AZ 85003
REMAND DESK CV-CCC
AHCCCS
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MINUTE ENTRY

Pursuant to A.R.S §12-910(e) this court may review administrative decisions in special actions and proceedings in which the State is a party:

The court may affirm, reverse, modify or vacate and remand the agency action. The court shall affirm the agency action unless after reviewing the administrative record and supplementing evidence presented at the evidentiary hearing the court concludes that the action is not supported by substantial evidence, is contrary to law, is arbitrary and capricious or is an abuse of discretion.

The scope of review of an agency determination under administrative review places the burden upon the Petitioner to demonstrate that the hearing officer's decision was arbitrary,

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capricious, or involved an abuse of discretion.¹ The reviewing court may not substitute its own discretion for that exercised by the hearing officer,² but must only determine if there is any competent evidence to sustain the decision.³

This matter has been under advisement and the Court has considered and reviewed the record of the proceedings from the administrative agency, exhibits made of record and the Memoranda submitted. After a careful review of the record, I found no competent authority to uphold the Recommended Decision of the Administrative Law Judge, and I agree with the decision of the Arizona Health Care Cost Containment System Administration's (hereafter "AHCCCS") Director's decision.

In the case at hand, Appellant was injured and received AHCCCS-funded medical care. Appellant received \$15,000 from the tortfeasor's insurance company. AHCCCS filed a lien against any third-party recovery, as authorized by A.R.S. §36-2915, to recover, to the fullest extent allowed by law, some of the \$23,827.48 it expended for Appellant's medical care. The record shows that AHCCCS is not seeking any remuneration from the third-party recovery for the funds expended by the State. However, AHCCCS is required by law to recover the federal share (here, \$6,577.00), and is required by contract to pay Public Consulting Group, Inc. \$1,160.65 for its efforts to recover the lien.

Appellant contends that AHCCCS should compromise the lien to reduce the amount the federal government is entitled to recover. Appellant fails to recognize AHCCCS's contract with Public Consulting Group, Inc., thereby indirectly suggesting that no recovery should be made the lien recovery entity. The record shows that funds were allocated to pay Appellant's counsel. The issue before this court is whether AHCCCS is prohibited from compromising the Medicaid lien with respect to Federal funds administered by AHCCCS.

The law governing this issue is quite clear. 42 U.S.C. §1396a(A)(25)(B) states that "in any case where such a [third-party] legal liability is found to exist after medical assistance has been made available... the state or local agency will seek reimbursement for such assistance to the extent of such legal liability." The statute does not say "*may* seek reimbursement," it says "*will*." It is mandatory that AHCCCS seeks to recover the federal share. Further, 42 C.F.R. §433.140(c) requires that "if the state receives [federal funds] in medical payments for which it receives third-party reimbursements, the state must pay the federal government a portion of the reimbursement [the state recovers]...." This federal regulation does not say that the state must pay the federal government a portion of the funds to which it is entitled; it says "a portion of the reimbursement."

¹ *Sundown Imports, Inc. v. Ariz. Dept. of Transp.*, 115 Ariz. 428, 431, 565 P.2d 1289, 1292 (App. 1977);

Klomp v. Ariz. Dept. of Economic Security, 125 Ariz. 556, 611 P.2d 560 (App. 1980).

² *Ariz. Dept. of Economic Security v. Lidback*, 26 Ariz. App. 143, 145, 546 P.2d 1152, 1154 (1976).

³ *Schade v. Arizona State Retirement System*, 109 Ariz. 396, 398, 510 P.2d 42, 44 (1973); *Welsh v. Arizona State Board of Accountancy*, 14 Ariz. App. 432, 484 P.2d 201 (1971).

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Further, 42 C.F.R. §433.154 illustrates how the distribution of monies recovered in cases is to be executed:

The agency must distribute collections as follows:

- a) To itself, an amount equal to State Medicaid expenditures for the Individual on whose right the collection was based.
- b) To the Federal Government, **the Federal share** of the State Medicaid expenditures...
- c) To the recipient, any remaining amount....

The law does not provide that the state may compromise the federal share; the law states the exact opposite – AHCCCS may not reduce the federal reimbursement. From a standpoint of both pure logic and a public policy perspective, to allow states to arbitrarily reduce the federal share of third-party recoveries would undermine programs such as AHCCCS. The law is quite clear: federal reimbursement by the state is mandatory.

IT IS THEREFORE ORDERED affirming the decision of the AHCCCS' Director's decision.

IT IS FURTHER ORDERED remanding this case back to the administrative agency for all further proceedings.